

OFFICE OF THE WASHINGTON STATE LIQUOR CONTROL BOARD

August 31, 1994

The regular meeting of the Washington State Liquor Control Board was called to order at 9:30 a.m., Wednesday, August 31, 1994, in Terrace Room A, Ridpath Hotel, Yakima, by Chairman Joe McGavick. Board Members Mike Murphy and Jack Rabourn were present. Also present was Kim O'Neal, Assistant Attorney General.

FETAL ALCOHOL SYNDROME WARNING SIGNS. Chairman McGavick announced this was the date and time designated for the Board to reach a decision on Washington Administration Code (WAC) 314-12-195, which would require retail licensees to post Board-provided signs warning of the potential dangers of alcohol consumption during pregnancy.

Jennifer McDougall, Alcohol Awareness Program Manager, gave a history of the Board's involvement in the issue of Fetal Alcohol Syndrome (FAS) signage. She explained the Board has held one public meeting and three public hearings on the proposed FAS warning signs, and have received a great deal of public testimony. Ms. McDougall stated the language of the rule and the sign have been modified as a result of the last hearing on August 24, 1994. She stated on-premises licensees would be required to post the signs in the women's restrooms and at the entrance to the liquor licensed area. A third placement option has been added for off-premises licensees, who would be required to post the signs either at the permanent display area for alcohol, the point of sale, or the main entrance. Ms. McDougall stated she is suggesting that the Board offer licensees one of three signs (please see attached), all of which have been considered in previous public hearings. The signs would be required in retail premises by October 5, 1994.

Ms. McDougall indicated the budget that was originally proposed covered only one sign in one size, and would have been approximately \$11,000 to handle printing and distribution. At this time Ms. McDougall stated she recommends the Board offer the three signs indicated in two sizes, either three by five inches or eight by ten inches. This option would increase the costs to approximately \$32,000.

**PLAINTIFF'S  
EXHIBIT**

CASE  
NO. **CV04-0360P**

EXHIBIT  
NO. **114**

WSA05324

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In accordance with regulatory reform laws, Ms. McDougall also presented for Board response a summary of the testimony received during the last hearing. A copy of the summary of testimony and Board responses will be provided to everyone who testified.

Additionally, Ms. McDougall stated since the last hearing she has contacted 25 interested parties who have given considerable input, to get their thoughts on the idea of offering a choice of signs to licensees. During that process, one sign that was previously considered by the Board was eliminated (the sign in the "Bad news - Good news" format). Ms. McDougall stated she received no input to indicate any of the parties contacted were unhappy with the three signs she is currently recommending.

Discussion followed regarding the concept of multiple signs and the distribution process. Board Member Rabourn moved approval of the recommendation to have multiple signs, Board Member Murphy seconded the motion. Further discussion followed during which Board Member Murphy indicated he has concerns about the increased cost of having multiple signs available. Board Member Rabourn recommended the deletion of the words "zero alcohol = zero risk", and the sentence "For more information call 1-800-662-9111." from one of the proposed signs. Board Member Murphy seconded the motion for discussion purposes, and following discussion withdrew his second. Board Member Rabourn moved to modify his original motion to delete the language in question, and the motion died for lack of a second.

Board Member Rabourn indicated his concerns over comments made during last week's public hearing, which implied the Board had intentionally not included parents of FAS children in the signage proposal process. He stated the Board has communicated with the FAS Interagency Coordinating Committee (FASICC), of which two people that made such implications are active members. Further, Sandy Randels, the coordinator of FASICC, has often helped the Board by relating information to the Committee's members. Board Member Rabourn stated the Board has held one meeting regarding the signage in which they were specifically seeking medical testimony, and thus asked only medical and health professionals to attend.

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Board Member Rabourn stated during last week's hearing the Board was given a copy of an article that supposedly proved that warning labels are effective. The article itself states it is estimated that non-risk drinkers reduced their drinking by the equivalent of one ounce of beer after the implementation of warning signs. Those drinking at risk levels did not change the amount of alcohol they consumed. Thus, Board Member Rabourn stated in this study risk drinkers, those targeted by the proposed warning signs, were less likely to respond to the warnings.

Finally, Board Member Rabourn indicated he feels the state's health agencies are ignoring mixed drug use as a serious problem, and he hopes they address the issue. He stated there are major studies by the Department of Health and Human Services which indicate the best marker for FAS is marijuana use.

Chairman McGavick stated he has drafted a letter (which he will present to his fellow Board Members to consider signing) to the chairman of the Washington State Medical Association, urging the Association's members to get involved in the FAS issue. He stated previous conversations with physicians have indicated many do not counsel women as to the dangers of consuming alcohol during pregnancy. Chairman McGavick indicated it is his belief the medical community has a paramount responsibility and an imperative role in the FAS issue.

Board Member Murphy indicated some of the issues brought up during the public hearings were points he has heard for the first time. He expressed his concern that the needs of natural and adoptive parents of FAS children be met. Board Member Murphy stated it is the families who really know the problems surrounding FAS, and his primary concern is to meet their needs in order to help prevent future alcohol-related birth defects.

Board Member Rabourn stated the Board has had concern for the victims of FAS from the beginning of the issue. He indicated the Board also has the responsibility to create accurate signage.

Chairman McGavick called for a vote on having the choice of the three signs recommended by staff made available to retail licensees. Chairman McGavick and

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Board Member Rabourn voted "aye", and Board Member Murphy indicated he still wanted to discuss the issue.

Chairman McGavick recognized three members of the public who wished to address the Board regarding FAS warning signs: Judy McBride-Bakken, speaking on behalf of the families of children with alcohol-related birth defects; Georgia Gore, speaking on behalf of natural and adoptive parents of FAS children; Kathleen Reynolds of the Spokane Health District; and Karen Blaine, a parent of children who suffer from exposure to alcohol.

Board Member Murphy asked the women who spoke if they found the three proposed signs acceptable. They indicated the signs are a step in the right direction. Chairman McGavick called for a vote of those in favor of the choice of the three signs recommended by staff made available to retail licensees, all Board Members voted "aye" and the motion carried.

Board Member Rabourn moved approval of WAC 314-12-195, Board Member Murphy seconded motion and it carried unanimously.

The Board congratulated staff on their hard work on the FAS signage issue.

ADMINISTRATIVE SERVICES DIVISION - UNCOLLECTIBLE CLAIMS.

Jim Hoing, Assistant Director, Administrative Services Division, stated as of the end of fiscal year 1994, the agency has 54 claims against 19 liquor suppliers that have been reviewed and determined to be uncollectible. In some cases the companies have gone out of business, and, in staff's opinion, any further collection attempts would be ineffective. Mr. Hoing recommended that the Board approve writing off \$3,357.00 as uncollectible claims.

Board Member Murphy moved approval of the recommendation, Board Member Rabourn seconded the motion. Following discussion Chairman McGavick restated the motion and called for a vote of those in favor, all Board Member voted "aye" and the motion carried.

PUBLIC INFORMATION OFFICE - LEGISLATIVE PROPOSALS. Carter

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Mitchell, Public Information Officer/Legislative Liaison, brought several proposals before the Board for consideration and possible action as agency request legislation for the 1995 legislative session (most of the items have been brought before the Board previously in written form and discussed during staff meetings).

The omnibus licensing bill includes a proposal to amend Revised Code of Washington (RCW) 66.24.010(2), to allow the Board to authorize a staff member to approve liquor licenses under the direction of the Board. Dave Goyette, Assistant Director, Regulatory Services Division, indicated the objective of the proposal is to allow his division to approve of routine transfers, special occasion licenses, and other licenses which are not controversial or have had objections raised about their issuance, in the absence of at least two Board Members. Ms. O'Neal indicated it is her opinion that the statute says the Board itself must approve the issuance of all licenses, and it does not mention delegating the authority to a staff member. She stated she would check into the matter. Further discussion followed. Chairman McGavick tabled decision on the matter for one week.

Other sections of the omnibus licensing bill approved include an amendment to RCW 66.24.025(11), which would repeal the need for liquor license transfers and require new applications for such actions, except in the case of a death of a spouse. RCW 66.24.210 would be amended to repeal the requirement for revenue stamps on wine bottles and similar actions to eliminate the need for tax stamps for beer (as required under RCW 66.24.290 and 66.24.300). Stamp requirements have been replaced by automated accounting procedures, and stamps themselves have not been used for several decades. Language in RCW 66.24.320 and 66.24.330 would be amended to clarify the sizes of containers which may be sold by class A and B licensees. When keg registration was adopted, the limit on container sizes was changed to four gallons, and both of these rules were inadvertently not changed at the same time. Finally, RCW 66.24.490 would be amended to remove the one day class I license. The intent of legislation passed during the last session was to standardize with an annual class I license rather than have single day licenses.

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The omnibus enforcement bill includes language changes to RCW 66.12.120, to allow private citizens to import for personal use not more than two liters of spirits or wine or 288 ounces of beer, once each month. Currently, no provision exists for importing products from other states, only foreign countries. The language is similar to that found in other states and in federal regulations for foreign products. Also included in the bill is an amendment to RCW 66.16.040 to allow any type of military identification card to be used as proof of age (currently, only active duty cards can be accepted). Gary Gilbert, Assistant Director, Enforcement Division, stated he supports the legislation. Mr. Gilbert indicated his staff has checked with military installations in Western Washington, and their practices are such to provide for legitimate identification. Mr. Mitchell stated the proposal was also being supported by military leadership in the legislature.

Also included in the omnibus enforcement bill is a proposal for a new section to 66.44, to allow 18, 19, and 20 year olds to perform some duties on non-retail premises (such as wholesalers, wineries, and breweries). This age group can currently work on retail premises under the supervision of a person 21 years of age or older. Additionally, the sunset clause for RCW 66.28.042 and 66.28.043 (adopted in 1990) pertaining to trade spending would be repealed. Both laws are set to expire June 30, 1995 unless the clause is repealed.

The Board rejected a proposal which would have provided a reward of up to \$1,000 for information leading to the arrest and conviction of persons violating liquor laws. Board Member Rabourn and Chairman McGavick summarized the Board's opposition as saying it was not a practice they wished to begin.

The Board approved a proposal to amend RCW 70.155.110, which would clearly give the Board rule making Authority for statutes pertaining to tobacco enforcement.

Board Members Murphy and Rabourn rejected a proposal brought forward by Chairman McGavick to eliminate the Board's price posting program and modify RCW 66.28.180 to provide for another form of postings. Phil Wayt, Executive Director of the Beer and Wine Wholesalers Association, stated the Association objects

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fundamentally to the deletion of the Board's responsibility to control and review price changes.

The Board approved the seeking of legislation which would allow liquor agency managers to obtain group insurance rates at the same rate of state employees, at their own expense. The legislation is an effort to correct inequities that occurred following the Internal Revenue Service's ruling that agency managers are independent contractors. The proposal would also remove liquor agency managers from the jurisdiction of the Personnel Appeals Board (in accordance with the IRS's ruling).

The Board also approved amendatory language to the tied house law (RCW 66.28.010) to allow class A,B,C,D, and H licensees to apply for either a domestic winery or brewery license. The legislature amended the statute last session to allow domestic wineries or breweries to seek retail licenses.

Finally, the Board approved legislation for mandatory server training. While the proposal has met with defeat in previous legislative sessions, primarily as a result of who pays for the training (licensees or employees), there is still support for the measure. The legislation would require any retail licensee or their employees who sell or serve liquor to have server training, and possess a permit valid for five years. Mr. Mitchell indicated discussions with trade associations, organized labor, and legislators would continue in order to make whatever mid-stream corrections might be necessary to help move the proposal forward.

MEETING RECESSED. The meeting was recessed at 10:32 a.m.

MEETING RECONVENED. The meeting was reconvened at 10:42 a.m. by Chairman McGavick. Board Members Murphy and Rabourn were present. Also present was Ms. O'Neal.

MERCHANDISING DIVISION - STORE LOCATION SELECTION PROCESS. Chairman McGavick asked Mike Donaldson, Assistant Director, Merchandising Division, to explain the process followed when determining new store locations, particularly in respect to existing liquor agencies. The discussion is a result of concerns voiced by two

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Spokane liquor agency managers to KREM-TV several months ago, that the Board had secret plans to relocate stores to adversely effect the agencies.

Mr. Donaldson stated historically the Board has directed the Merchandising Division to establish locations of stores and agencies to meet the needs of the community. When selecting a store or agency site, staff examines many different criteria to determine what the needs of the community are, how many liquor outlets are required to meet the community's needs, and where the outlet should be placed (taking into account traffic patterns, marketing areas, shopping centers, etc.). Mr. Donaldson further explained a store is placed in communities that purchase over \$800,000 or more worth of liquor annually, and agencies are placed in communities with smaller sales volumes. After all the information is gathered, the Merchandising Division puts together a presentation for Board approval.

Mr. Donaldson explained the Board sometimes moves stores when population centers shift. In some cases, as an area goes from neighborhood to commercial zoning, it requires the Board to relocate a store to better serve the community.

Chairman McGavick asked what would be done if an agency manager felt that a liquor store had been relocated close enough to have a detrimental impact on the agency. Mr. Donaldson stated the placement of the store, with its larger selection, would be based primarily on how to best serve the community. Louis Solomon, Assistant Operations Supervisor, Stores, stated in a situation where a population grew to meet the sales criteria for a store, the first consideration would be to convert the agency to a store. The agency manager would be given the option to apply for the store manager position, and Mr. Solomon indicated in most situations the former agency manager is either selected as the manager or the assistant manager of the store.

Board Member Rabourn verified with Mr. Donaldson that part of the Merchandising Division's five year plan is to look at store and agency locations to insure the agency is meeting the needs of the public.

Chairman McGavick stated agencies are just as important to the Board as stores, and store relocation



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policies should take into effect the impact on nearby agencies. Board Member Murphy concurred with Chairman McGavick's comments.

ADMINISTRATION - UNIVERSITY OF WASHINGTON DEMOGRAPHICS STUDY. Chairman McGavick explained as part of his report to the Governor on the feasibility of privatization, he recommended a franchise system like that of West Virginia. The system would allow any citizen to bid for the right to sell spirits within a franchise area, which is based on demographics. Chairman McGavick indicated technical guidance was needed to set up the franchise areas fairly. He requested Board approval to spend approximately \$7,500 for a study by Dr. Bill Morrill of the University of Washington for a demographics study. The study would provide a recommendation for the number of franchise areas and the number of stores that should be operated within each franchise area, in order to meet the needs of the public in a fair and equitable manner.

Board Member Rabourn asked Chairman McGavick how agencies would fit into the franchise system. Chairman McGavick stated it was his recommendation, in the event of privatization, to leave the liquor agencies in place for five years and then open them up for franchises as well.

Board Member Rabourn also asked Ms. O'Neal if the consulting document was within the agency's limit for issuance without requesting bids. Ms. O'Neal indicated she believes that because of the expertise available within the University of Washington, the information would probably not be available from any other source, and thus the single source rule would apply. She stated she would check into the matter.

The decision on the expenditure for the study was tabled for one week.

ENFORCEMENT DIVISION - CONTROLLED LIQUOR BUYS ("STINGS"). Mr. Gilbert presented guidelines for Board approval for the use of underage operatives to pursue investigation of a complaint of sales of liquor and/or tobacco to underage persons. He explained the Board would allow underage operatives to be used if the person who made the complaint left their name and phone number. Once a named complaint is received, the

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licensee would be contacted and told of the complaint, they would be told training is available, and within 30 days an underage operative would be used to verify the complaint.

Mr. Gilbert further explained no operative would be over 19 years of age for a complaint of sales of liquor or over 17 years of age for a complaint of sales of tobacco to a minor. The operative would be someone who appears their true age. They would be trained in accordance with the Board's sting guidelines, and would sign a "release and waiver of civil claims" form (witnessed by their parent or guardian).

Further, Mr. Gilbert stated the Liquor Agent in Charge would be required to obtain approval for use of an operative from himself or a designee. A report of findings would be required to be made the next working day to Mr. Gilbert.

Board Member Murphy stated he supports the use of stings for investigation of complaints to minors, as long as strict guidelines are enforced.

Board Member Rabourn stated he continues to oppose stings, as he believes they are contrary to the Board's efforts in preventative enforcement, destructive to the Board's relationship with licensees, inconsistent with the Governor's request that agencies concentrate on technical assistance, and contain a tremendous potential for abuse.

Board Member Murphy moved approval of the adoption of the guidelines as outlined by Mr. Gilbert, Chairman McGavick seconded the motion. Discussion followed during which Chairman McGavick stated he was concerned that stings were not being used to investigate complaints of sales to apparently intoxicated persons, which he perceives to be as big of a problem as sales to minors. Chairman McGavick stated he approves of the strict guidelines proposed by Mr. Gilbert, which he felt will mitigate the potential for abuse.

Dennis Gunther, President of the Restaurant Association of the State of Washington, and Don McBride, a citizen, addressed the Board to recommend that the notification of complaint to the licensee be made in writing, in order to establish a chain of communication.

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Board Member Rabourn asked Ms. O'Neal if there was a need for a release of civil claims to be constructed for the minor's parent or guardian to sign. Ms. O'Neal indicated she doesn't know that the additional release would be legally required, but it may be prudent. Mr. Gilbert explained the chance of injury to an operative is very small, because an agent is always in the vicinity of the operative, and they are out of the store before the licensee is told the minor is an operative. Board Member Rabourn stated although he remains philosophically opposed to stings, he commended Mr. Gilbert on the construction of the guidelines.

Chairman McGavick called for a vote of those in favor of the guidelines for operatives in controlled buys, with the addition of the recommendation for the notification of complaint to licensees be in writing, Chairman McGavick and Board Member Murphy voted "yea", Board Member Rabourn voted "nay" and the motion carried.

**SPLIT CASE HANDLING FEE.** Chairman McGavick stated he wished to open up general discussion regarding split case handling fees, since some class H licensees were present. He stated the imposition of the fee, which was to have started September 1, had been placed on hold to facilitate further discussion with class H licensees who had not been heard when the proposal went through the regular hearing process.

Gene Vosberg, Executive Vice-President of the Restaurant Association of the State of Washington, addressed the Board. Mr. Vosberg stated at the August 2 meeting of the Association's board of directors, the board took the position that they are in opposition to the split case handling fee. Mr. Vosberg asked if there was some way the Association could effectively manage in order to reduce the costs of processing class H orders, or if there was a way the Liquor Control Board could cover their costs in another manner.

Board Member Rabourn explained one of the Board's responsibilities is to examine their operation, the way any other business would. The Board found split case handling was costing approximately \$2,000,000 annually. Further, class H licensees currently enjoy a 15.3 percent discount on distilled spirit purchases,

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which is predicated on a system of being able to process class H order quickly and efficiently (mostly in full cases and with one order per week per licensee). Board Member Rabourn stated the Board does not feel they can increase the mark-up for distilled spirits to retail customers in order to subsidize serving class H licensees at a discounted rate. Thus, the Board decided to assess the split case handling fee for class H licensees.

Board Member Rabourn further stated in the past class H licensees were restricted to purchasing their liquor in full cases, and only once a week at certain times. The Board has since modified policies to be more customer service oriented, and allowed for emergency orders. Since that time some licensees have "emergencies" everyday, causing delays for retail customers.

Board Member Rabourn stated he was previously asked about class H discounts and split case handling fees in other states. He indicated he has since surveyed all the control states to determine their charges for split case handling: Wyoming charges \$2.50 a split case, Ohio charges \$.30 per bottle, Mississippi charges \$450 per \$5,000 of purchases at retail price, Pennsylvania charges \$.20 per bottle, and North Carolina charges \$4.00 per gallon above retail. The class H discounts in other control states run from no discount to five percent on all orders to 10 percent on full cases only. Mr. Hoing reminded Board Member Rabourn that California charges \$9.00 per part case, regardless of bottle count.

Chairman McGavick stated many licensees are essentially asking the taxpayers to pay for storing their inventory, because they do not wish to use funds or storage space to purchase full cases of liquor. He added licensees who do not wish to pay the split case fee can purchase their liquor in full cases. Chairman McGavick stated the fee is an attempt by the Board to find equity, as it seems unfair to ask the public to subsidize split case handling for class H licensees.

Chairman McGavick further stated the Board appreciates the testimony they received in the August 3 meeting, when class H licensees expressed they were being burdened by many different fees from every level of government. The Board thus decided to put the fee on hold, in case there was some compelling reason to not

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have the fee that the Board had not previously considered.

Mr. Vosberg again stated the Association would like to find a way for the fee not to be applied. He stated the Association agrees that class H orders should be placed at restricted times. Board Member Rabourn asked Mr. Vosberg if class H licensees would be willing to pay an additional \$1,000 for their license to offset the cost of split case handling. Mr. Vosberg stated he would have to present that question to the Association members.

Board Member Murphy suggested an idea that was proposed by Susanne St. Pierre of the Kettle Falls Agency, that perhaps the fee could be assessed on only those products that are used frequently, and not be assessed on specialty type products that are used in very small quantities.

Kathy Simpson, a liquor store employee, suggested that the class H discount be reduced instead of assessing a split case handling fee. Board Member Rabourn stated a reduction in discount would take legislative action.

Key Chinn, a licensee from Yakima, addressed the Board. Mr. Chinn suggested the Board enforce the policy of class H licensees picking up their order on a set day as a way to reduce costs, and those licensees who have daily "emergencies" would be assessed a fee.

Mr. Gunther addressed the Board. Mr. Gunther stated the split case handling fee would cost the average licensee between \$800 and \$1,100 annually. He indicated Association members stated they could adjust their ordering habits to help eliminate a fair amount of split case ordering activity, in order to alleviate the need for the fee.

Board Member Rabourn reiterated the purpose of the fee is to recover costs. Thus, if after the fee is implemented split case ordering is reduced and costs go down, the fee would be adjusted accordingly.

Following further discussion, Chairman McGavick suggested that Board Member Rabourn, along with Mr. Hoing and Mr. Donaldson, meet with Mr. Vosberg, Mr. Gunther, class H representatives, and liquor store

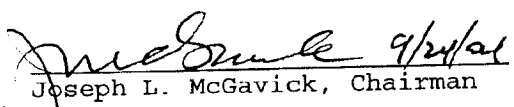
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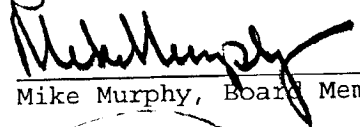
employee representatives to develop a strategy regarding split case handling.

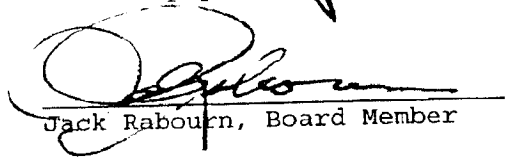
MERCHANDISING DIVISION - NOTICE TO VACATE STORE 101 - SEATTLE. Mr. Donaldson stated the landlord of Store No. 101, located at 709 South Michigan Street in Seattle, has notified him that the Board has until the end of September to vacate the property. Until an alternate location can be found, the store will be relocated to the Distribution Center as a class H service center only. Appropriate notification to all class H licensees who do business at the store will be made, and a news release will be prepared.

MEETING RECESSED. The meeting was recessed at 11:47 a.m., until the call of the Chair.


MEETING ADJOURNED. The meeting was adjourned at 4:30 p.m.

  
Joseph L. McGavick, Chairman

  
Mike Murphy, Board Member

  
Jack Rabourn, Board Member

Attest:

  
Teresa Blase  
Board Secretary

Choice of signs that will be offered to retail licensees:

